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FEDERAL COMMUNICATIONS COMMISSION

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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Applications of	)	MM Docket No. 93-156
TRINITY CHRISTIAN CENTER OF SANTA	)	
ANA, INC., d/b/a TRINITY	)	
BROADCASTING NETWORK	)	BRCT-911129KR
For Renewal of License of	)	
Television Station WHSG(TV)	)	
Monroe, Georgia	)	
GLENDAL E BROADCASTING COMPANY	)	BPCT-920228KE
For Construction Permit	)	
Monroe, Georgia	)	

To: Hon. Joseph Chachkin  
Administrative Law Judge

CONTINGENT MOTION TO ENLARGE ISSUES

TRINITY CHRISTIAN CENTER OF SANTA  
ANA, INC. d/b/a TRINITY  
BROADCASTING NETWORK

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### SUMMARY

If Glendale's application is not summarily dismissed pursuant to Trinity's pending motion to dismiss, then a financial qualifications issue must be designated against Glendale.

Glendale is relying on non-liquid assets of George F. Gardner to finance the construction and initial operation of its proposed Monroe station. Under well-settled Commission policy, non-liquid assets will not support an applicant's financial certification absent an independent professional appraisal establishing their value. Glendale's application and its responses in this proceeding make clear by inference, permissibly drawn (and in this case all but compelled), that Gardner conducted no such appraisals before filing the application and certifying Glendale's financial qualifications. Having failed to establish that it was financially qualified before it certified, Glendale has been financially unqualified from the outset. Hence, a financial qualifications issue must be designated.

In addition, recognizing that in the Miami proceeding (MM Docket No. 93-75) the Presiding Judge has already denied requests for several other issues against Glendale, Trinity nonetheless formally requests designation of those issues here

in order to preserve its appellate rights as to such issues in this proceeding.

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To: Hon. Joseph Chachkin  
Administrative Law Judge

**CONTINGENT MOTION TO ENLARGE ISSUES**

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity"), by its counsel, pursuant to Section 1.229(b)(2) of the Commission's Rules, hereby files this contingent motion to enlarge the issues against Glendale Broadcasting Company ("Glendale"). This motion is contingent on the disposition of the pending "Motion To Dismiss Application" filed by Trinity on June 25, 1993. Should the Presiding Judge grant that motion and dismiss Glendale's application, this motion to enlarge issues will be moot and need not be considered.

### A. Introduction

1. This motion seeks the designation of several issues concerning Glendale's basic qualifications to be a licensee. Most (but not all) of these issue requests have already been ruled upon by the Presiding Judge in MM Docket No. 93-75 (the comparative renewal proceeding between the same parties involving Channel 45, Miami, Florida).<sup>1/</sup> Trinity recognizes that the Presiding Judge denied most of these requests in the Miami MO&O, and Trinity does not expect reconsideration of those rulings here. However, Trinity believes that in order to preserve its appellate rights as to those issues in this proceeding, it must formally move for designation of the issues here as well as in Miami.<sup>2/</sup>

2. To avoid needlessly burdening the Presiding Judge and the parties, this Motion will not repeat the arguments that support the issues already denied in the Miami MO&O. Instead, those requested issues will simply be listed at the end of this Motion, and the arguments in support thereof will be incorporated by reference to the Miami pleadings.

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<sup>1/</sup> Memorandum Opinion and Order, FCC 93M-469, released July 15, 1993 (hereinafter, the "Miami MO&O").

<sup>2/</sup> If for some reason the Miami proceeding were to terminate without appellate rulings on the issues in question, Trinity would (it believes) be without appellate recourse on those issues in this proceeding if it had not timely moved for designation of the issues here.

3. The bulk of this Motion addresses a requested issue concerning Glendale's financial qualifications in this proceeding (which Trinity did not seek in Miami). To that matter we turn first.

#### **B. Financial Qualifications Issue**

4. Trinity's pending motion to dismiss Glendale's Monroe application urges dismissal without a hearing because Glendale failed to establish its financial qualifications at the time it filed its application. However, if summary dismissal is deemed inappropriate, then an issue must be designated for hearing to determine whether Glendale is financially qualified.

##### **1. Glendale's Financial Proposal**

5. Glendale estimates the costs of construction and initial operation of its proposed Monroe station to be \$2,871,066.<sup>3/</sup> To meet those costs, Glendale relies solely on a personal loan commitment from its president and majority stockholder, George F. Gardner. That commitment is contained in a letter dated February 26, 1992, from Gardner to his daughter (who is Glendale's other principal).<sup>4/</sup> In his letter, Gardner acknowledged that he proposed personally to fund not only the estimated \$2,871,066 needed for this Monroe station, but also

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<sup>3/</sup> See Glendale Application, Section III (Attachment 1 hereto).

<sup>4/</sup> See Glendale Application, Exhibit 4 (Attachment 2 hereto).

the cost of constructing and operating Glendale's proposed Miami television station.<sup>5/</sup> The letter concluded, "I have more than sufficient assets to meet both loan commitments."

6. Glendale's co-pending Miami application listed the estimated costs for that facility as \$2,169,816.<sup>6/</sup> Since Gardner was committing to fund both the Miami and the Monroe proposals, his combined loan commitment for the period February 27 to March 26, 1992, totaled \$5,040,882. On March 26, 1992, Glendale amended in Miami to substitute a bank letter in lieu of Gardner's personal loan for the Miami application, thus reducing his commitment as of that date to just the \$2,871,066 specified in this Monroe application. At no time since filing the Monroe application on February 27, 1992, has Glendale amended its Monroe financial proposal to rely on any source other than Gardner's personal assets.

7. An applicant proposing to finance multiple applications must have sufficient available net liquid assets to fund all of them. Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5878, 68 RR 2d 656, 658-59 (Rev. Bd. 1990). Thus, Glendale was not financially qualified when it filed its Monroe application

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<sup>5/</sup> Two months before filing its Monroe application, Glendale filed a similar application challenging the license renewal of Trinity's affiliated station WHFT(TV), Miami, Florida (BPCT-911227KE, MM Docket No. 93-75).

<sup>6/</sup> See Glendale's Miami Application, Section III and Exhibit 4 (Attachment 3 hereto).



unless Gardner was able to lend Glendale at least \$5,040,882 to satisfy his simultaneous funding commitments. As discussed below, Glendale's own application and related submissions make it abundantly clear that Glendale never ascertained Gardner's ability to meet those concurrent obligations.

**2. Gardner Lacked Sufficient Net Liquid  
Assets To Meet His Loan Commitments**

8. In his letter to his daughter of February 26, 1992 (**Attachment 2**), after noting that \$2,871,066 would be needed for Monroe, Gardner confesses that "I do not have net liquid assets totalling this amount." Nonetheless, he states:

"I have more than sufficient assets which I can sell to meet this loan commitment. I have identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of those assets would provide me with sufficient liquid assets to meet this loan commitment."

Referring to his co-pending commitment to fund Glendale's proposed Miami station as well, Gardner adds that "I have more than sufficient assets to meet both loan commitments." Hence, Glendale was relying on Gardner's non-liquid personal assets to fund \$5,040,882 in combined estimated costs for both applications.

**3. Gardner Clearly Did Not Properly Ascertain  
The Sufficiency of His Non-Liquid Assets**

9. It is well settled that non-liquid assets will not support an applicant's financial certification unless (a) such assets are unencumbered, are readily marketable, and have been independently professionally appraised, (b) the appraised value is discounted by one-third to account for potential future market fluctuations, (c) current liabilities are subtracted, and (d) the resulting amount is enough to meet the estimated costs. Central Florida Communications Group, Inc., FCC 93R-29, released June 18, 1993 (Rev. Bd.); Opal Chadwell, 4 FCC Rcd 1215, 65 RR 2d 1498 (1989); Christian Children's Network, Inc., 101 FCC 2d 612, 614 (1985); Texas Communications Limited Partnership, supra, 5 FCC Rcd at 5878, 68 RR 2d at 658; Port Huron Family Radio, Inc., 5 FCC Rcd 4562, 4563, n. 5, 68 RR 2d 28 (1990); Dodge-Point Broadcasting Co., 11 FCC 2d 751, 754, 12 RR 2d 457, 461 (1968); Vista Broadcasting Company, Inc., 18 FCC 2d 636, 637, 16 RR 2d 838, 839 (Rev. Bd. 1969).

10. On the face of Gardner's loan commitment letter (**Attachment 2**), it is apparent that Gardner did not obtain the necessary professional appraisals to ascertain whether his non-liquid assets were sufficient under Commission standards. While asserting in conclusory terms that "I have more than sufficient assets" and that "I have identified specific assets . . . that can be readily converted to cash or other liquid assets," the

letter does not state that the assets have been appraised. This omission is telling, since reference to appraisals would have bolstered the obvious purpose of the letter, which was to demonstrate financial qualification.

11. Even more revealing is the response Glendale gave when challenged on this point by Trinity's "Motion To Dismiss Application" filed June 25, 1993. George Gardner's declaration submitted with Glendale's Opposition, filed July 8, 1993, further supports the inference that no appraisals were made. Like the loan commitment letter in the application, the declaration (**Attachment 4** hereto) was submitted to support Glendale's financial certification -- and more particularly to meet the issue raised by Trinity. Toward that end, the declaration provides facts about Gardner's financial statement and assets. Significantly, however, it does not say the one thing Gardner had to say that would resolve the appraisal issue in Glendale's favor (if it were true), namely that he conducted appraisals before he certified. Glendale has now twice assiduously avoided saying that.<sup>1/</sup>

12. The studied omission of such crucial information from Gardner's declaration, as well as from his loan commitment letter, creates a conclusive inference that in truth Gardner had

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<sup>1/</sup> The first time was in the Miami proceeding. See Glendale's "Opposition to Contingent Motion To Enlarge Issues Against Glendale Broadcasting Company," filed June 7, 1993, in MM Docket No. 93-75, p. 10.

not conducted appraisals when he certified Glendale's financial qualifications -- a fact Glendale has avoided admitting in so many words but has never denied. Washoe Shoshone Broadcasting, 3 FCC Rcd 3948, 3953, 64 RR 2d 1748, 1755 (Rev. Bd. 1988); Port Huron Family Radio. Inc., 4 FCC Rcd 2532, 2535, 66 RR 2d 545, 550 (Rev. Bd. 1989).<sup>8/</sup>

13. Glendale has argued that only at the hearing stage may the Commission draw an adverse inference from a party's failure to provide information that would materially aid its defense.<sup>2/</sup> However, Glendale has offered neither legal authority nor a cogent reason for such a restriction. That Trinity bears the burden in the pre-designation stage is irrelevant, because the "adverse inference" principle on its face applies to any party presenting evidence, regardless of burden. In assessing whether a hearing is required on a point in issue, the Commission is empowered to draw inferences. Gencom, Inc. v. FCC, 832 F.2d 171, 180-81 (D.C. Cir. 1987); Citizens for Jazz on WRVR v. FCC,

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<sup>8/</sup> In Washoe Shoshone, the Board applied the following principle of law from 2 WIGMORE ON EVIDENCE §285 (1940): "The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance, document, or witness, if brought, would have exposed facts unfavorable to the party."

<sup>2/</sup> See Glendale's "Opposition to Motion To Dismiss Application" filed July 8, 1993, pp. 3-4 (hereinafter, "Glendale Opposition").

775 F.2d 392, 394-96 (D.C. Cir. 1985). Thus, when a party chooses to present certain facts in its defense at the pre-designation stage (as Glendale has done here), there is no logical reason why the Commission should not draw the same common-sense inferences from such presentation that it would draw in a hearing.

**4. Glendale Has Not Demonstrated  
That It Is Financially Qualified**

14. While acknowledging that the market value of certain assets must be discounted under Commission policy, Glendale has argued that even after appropriate discounts are applied to the \$11,997,327 shown on Gardner's financial statement, his assets exceeded Glendale's projected costs.<sup>10/</sup> However, that argument leads nowhere, because the \$11,997,327 figure attaches to non-liquid assets and thus will not be recognized without appraisals. A cognizable figure for financial qualifications purposes results only when the discount is applied to appraised market values. Moreover, even taking Gardner's declaration in the light most favorable to Glendale, the ratio of his total assets (\$11,997,327) to his loan commitment (\$5,040,882) is substantially less than the ratios deemed acceptable in other cases. Central Florida Communications Group, Inc., supra, at para. 11, quoting Texas Communications Limited Partnership, 6

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<sup>10/</sup> Glendale Opposition, p. 8.

FCC Rcd at 5194, n. 7 (slightly more than 2:1 ratio not enough).<sup>11/</sup>

## 5. Summary

15. Because Gardner relied on non-liquid assets without first obtaining appraisals, Glendale lacked reasonable assurance of sufficient funding when it filed its application. Moreover, at no time since the original filing has Glendale sought to establish its financial qualifications by amendment. By definition, therefore, Glendale has been financially unqualified from the outset. If its application is not dismissed for that reason (as Trinity has urged), then designation of a financial qualifications issue is plainly warranted. As the Presiding Judge correctly observed in the Miami MO&O (at ¶15), "the failure to secure appraisals of non-liquid assets (assuming that to be the case) may raise financial qualifications questions." No such issue was designated in Miami because in that proceeding Glendale amended its application as of right to substitute a bank letter in lieu of Gardner's personal assets as the source

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<sup>11/</sup> It should be noted that an unspecified portion of Gardner's assets are described as being "amounts receivable" (Gardner Declaration, p. 1), which cannot be relied on in any event. Accounts receivable can be relied on only to the extent they offset accounts payable. Midwestern Broadcasting Co., Inc., 15 RR 2d 76, 78, 15 FCC 2d 720, 722 (1968). Gardner had no accounts (or amounts) payable, since he asserts that he had no liabilities. Therefore, his certification based on "amounts receivable" is patently defective.

of financing. Here, however, as noted above, Glendale continues to rely solely on Gardner's assets.

16. Accordingly, the following issue should be designated for hearing:

**"To determine whether Glendale Broadcasting Company is financially qualified be a Commission licensee."**

17. The burden of proceeding and burden of proof on this issue should be placed on Glendale, because the operative facts with respect to the issue are peculiarly within the knowledge of that applicant and its principals. TeleSTAR, Inc., 3 FCC Rcd 2860, 2861 (¶ 13), 64 RR 2d 1444, 1447 (1988).

**C. Request for Issues Previously Denied**

18. For the reason stated at the outset of this Motion, Trinity also formally requests designation of the following issues, which were denied by the Presiding Judge in the Miami MO&O. In support, Trinity hereby incorporates by reference the arguments advanced in the "Contingent Motion To Enlarge Issues Against Glendale Broadcasting Company" filed May 13, 1993, and "Reply to Opposition" filed June 22, 1993, in MM Docket No. 93-75 (the "Trinity Miami Pleadings"). The alleged violations referred to in those pleadings are equally applicable to Glendale's application in this proceeding. The requested issues are:

(1) "To determine (a) whether the submission made in Glendale's application regarding the rehabilitation of George F. Gardner is of sufficient scope and currency to meet the standards for rehabilitation submissions prescribed for Mr. Gardner by the Commission in RKO General, Inc. (WAXY-FM), and (b) if not, whether Glendale has made an adequate threshold showing that Gardner is currently qualified;"

(2) "To determine whether Glendale Broadcasting Company is qualified to be a Commission licensee in light of the findings and conclusions concerning misrepresentation and/or lack of candor made against George F. Gardner in MM Docket No. 84-1112 et seq. (RKO General Inc. (WAXY-FM));"

(3) "To determine whether Glendale falsely certified its financial qualifications in violation of Section 73.1015 of the Commission's Rules and, if so, whether Glendale is qualified to be a licensee;"

(4) "To determine whether Glendale has violated Section 73.3514 and/or Section 1.65 of the Commission's Rules and, if so, the effect thereof on Glendale's basic qualifications to be a licensee;"

(5) "To determine whether Raystay Company has made misrepresentations or lacked candor with the Commission in low power television (LPTV) applications in violation of Section 73.1015 of the Commission's Rules and, if so, the effect thereof on Glendale's qualifications to be a licensee;"<sup>12/</sup>

(6) "To determine whether George F. Gardner made misrepresentations and/or

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<sup>12/</sup> This issue is only partially incorporated by the misrepresentation/lack of candor issue designated in the Miami MO&O. That issue covers only the LPTV extension applications filed by Raystay Company, and not the initial construction permit applications. Id., ¶¶20-21. Trinity is here requesting designation of an issue that encompasses both the initial applications and the extension applications.



lacked candor in violation of Section 73.1015 of the Commission's Rules in 'rehabilitation' statements he made to the Commission in March 1990 and May 1990 and, if so, the effect thereof on Glendale's qualifications to be a licensee;"

(7) "To determine whether Glendale made misrepresentations and/or lacked candor in violation of Section 73.1015 of the Commission's Rules in reaffirming the 'rehabilitation' statements made by George F. Gardner to the Commission in March 1990 and May 1990 and, if so, the effect thereof on Glendale's qualifications to be a licensee;" and

(8) "To determine the facts and circumstances surrounding the failure of Raystay Company to construct and operate low power television stations of which it has been the permittee and, in light thereof, whether there is reasonable assurance that Glendale Broadcasting Company would timely construct and operate the facility for which it seeks authorization in BPCT-92028KE."

19. As urged in the Trinity Miami Pleadings, designation of the foregoing issues should be accompanied by appropriate forfeiture notices.

#### D. Conclusion

20. If Glendale's application is not dismissed at the threshold as ungrantable for lack of financial qualifications, this contingent motion should be granted and the issues specified herein should be designated for hearing.

Respectfully submitted,

TRINITY CHRISTIAN CENTER OF SANTA  
ANA INC., d/b/a TRINITY  
BROADCASTING NETWORK

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August 12, 1993



# SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 2,871,066

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
George F. Gardner 500 Glendale Street Carlisle, PA 17013  SEE EXHIBIT 4	(717) 245-2723	Shareholder, Officer and Director	\$2,871,066



EXHIBIT 4

February 26, 1992

Ms. Mary Anne Adams  
Vice President  
Glendale Broadcasting Company  
469 E. North Street  
Carlisle, PA 17013

Dear Mary Anne:

This is in connection with Glendale Broadcasting Company's application for a new television station in Monroe, GA.

The sum of \$2,871,066 will be required to meet the construction and initial operation costs for three months. I am willing to loan to Glendale Broadcasting Company up to that amount for construction and initial operations costs. The loan will be for a five-year period at 9% interest. No collateral will be required. No principal or interest need be paid until the station has been broadcasting for six months. I have more than sufficient assets to meet this commitment. While I do not have net liquid assets totaling this amount, I have more than sufficient assets which I can sell to meet this loan commitment. I have identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of those assets would provide me with sufficient liquid assets to meet this loan commitment. I am willing to sell such assets as are necessary to meet this commitment.

I intend to loan Glendale Broadcasting Company sufficient funds as it prosecutes its Monroe, GA application to meet all of its expenses on an ongoing basis.

Ms. Mary Anne Adams  
Page Two  
February 26, 1992

This letter does not modify any of the terms of my letter to you dated December 20, 1991, regarding my obligation to loan Glendale Broadcasting Company sufficient funds to construct and operate the proposed Miami television station. I have more than sufficient assets to meet both loan commitments.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "George F. Gardner". The signature is written in dark ink and is positioned above the typed name.

George F. Gardner  
President  
Glendale Broadcasting Company





**ATTACHMENT 10**

**Glendale Miami Application, Section III and Exhibit 4**